



General Assembly

***Amendment***

*January Session, 2007*

LCO No. 8951

**\*HB0710008951HDO\***

Offered by:

REP. STONE, 9<sup>th</sup> Dist.

REP. RYAN, 139<sup>th</sup> Dist.

To: Subst. House Bill No. **7100**

File No. 331

Cal. No. 284

**"AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective January 1, 2008*) As used in this section  
4 and sections 2 to 6, inclusive, of this act:

5 (1) "Client" means any person who, as an employer, enters into a  
6 professional employer agreement with a professional employer  
7 organization;

8 (2) "Coemployment relationship" means an ongoing relationship,  
9 rather than a temporary or project specific relationship, in which the  
10 rights, duties, and obligations of an employer are allocated between a  
11 professional employer organization and a client pursuant to a  
12 professional employer agreement and as provided in sections 2 to 6,  
13 inclusive, of this act;

14 (3) "Covered employee" means an individual who (A) is an  
15 employee of a client that has a coemployment relationship with a  
16 professional employer organization, (B) has received written notice of  
17 the coemployment, and (C) has received a written summary of the  
18 obligations and responsibilities of the client and the professional  
19 employer organization pursuant to the professional employer  
20 agreement;

21 (4) "Department" means the Labor Department;

22 (5) "Commissioner" means the Labor Commissioner;

23 (6) "Professional employer organization group" means two or more  
24 professional employer organizations that are majority-owned or  
25 commonly-controlled by the same entity, parent or controlling  
26 persons;

27 (7) "Person" means any individual, partnership, corporation, limited  
28 liability company, association or other legal entity;

29 (8) "Professional employer agreement" means a written contract by  
30 and between a client and a professional employer organization;

31 (9) "Professional employer organization" means any person engaged  
32 in the business of providing professional employer services, regardless  
33 of whether such person uses the term or conducts business as a  
34 professional employer organization, staff leasing company, registered  
35 staff leasing company, employee leasing company, administrative  
36 employer or any other name. Professional employer organizations  
37 does not include:

38 (A) Arrangements in which a person, other than a person whose  
39 principal business activity is entering into professional employer  
40 arrangements, shares employees with a commonly-owned company  
41 within the meaning of Section 414(b) and (c) of the Internal Revenue  
42 Code of 1986, or any subsequent corresponding internal revenue code  
43 of the United States, as from time to time amended;

44 (B) Independent contractor arrangements in which a person  
45 assumes responsibility for the product produced or service performed  
46 by such person or such person's agents and retains and exercises  
47 primary direction and control over the work performed by the  
48 individuals whose services are supplied under such arrangements; or

49 (C) Temporary help services that recruit, hire and solely set the  
50 compensation of their employees, assign employees to work for an  
51 organization as temporary, seasonal or special project employees and  
52 reassign employees to other employers at the end of an assignment;

53 (10) "Professional employer services" means entering into  
54 coemployment relationships in which all or a majority of the  
55 employees providing services to a client or to a division or work unit  
56 of a client are covered employees; and

57 (11) "Registrant" means a professional employer organization  
58 registered under section 3 of this act.

59 Sec. 2. (NEW) (*Effective January 1, 2008*) (a) Nothing in this section or  
60 sections 3 to 6, inclusive, of this act or in any professional employer  
61 agreement shall:

62 (1) Diminish existing rights between covered employees and a client  
63 existing prior to the effective date of the professional employer  
64 agreement; or

65 (2) Create any new or additional enforceable right of a covered  
66 employee against a professional employer organization that is not  
67 specifically provided by the professional employer agreement or in  
68 this section or sections 3 to 6, inclusive, of this act.

69 (b) (1) A covered employee who is required to be licensed,  
70 registered or certified under any provision of the general statutes shall  
71 be deemed to be solely an employee of the client for purposes of any  
72 such license, registration or certification requirement.

73 (2) A professional employer organization shall not be deemed to

74 engage in any occupation, trade, profession or other activity that is  
75 subject to licensing, registration or certification requirements, or is  
76 otherwise regulated by a governmental entity solely by entering into  
77 and maintaining a coemployment relationship.

78 (c) For purposes of determination of tax credits and other economic  
79 incentives provided by this state or other governmental entity and  
80 based on employment, covered employees of the client shall be  
81 deemed employees solely of the client.

82 (d) A client company's status or certification as a small, minority-  
83 owned, disadvantaged or woman-owned business enterprise or as a  
84 historically underutilized business shall not be affected by the client  
85 company entering into an agreement with a professional employer  
86 organization or using the services of a professional employer  
87 organization.

88 Sec. 3. (NEW) (*Effective January 1, 2008*) (a) Subject to the provisions  
89 of subsection (c) of this section, no person shall provide, advertise or  
90 otherwise hold itself out as providing professional employer services  
91 in this state unless such person is registered as a professional employer  
92 organization. Any person seeking initial registration as a professional  
93 employer organization shall apply to the Labor Commissioner on a  
94 form provided by the commissioner. Such application shall include:

95 (1) The name or names under which the applicant will conduct  
96 business or under which the applicant conducted business prior to  
97 January 1, 2008;

98 (2) The address of the principal place of business of the applicant  
99 and the address of each office it maintains or will maintain in this state;

100 (3) The applicant's taxpayer or employer identification number;

101 (4) A list by jurisdiction of any name under which the applicant  
102 operated in the five years preceding the date of application, including  
103 any alternative names, names of predecessors and, if known, successor

104 business entities;

105 (5) A statement of ownership, that includes the name and evidence  
106 of the business experience of any person that, individually or acting in  
107 concert with one or more other persons, owns or controls or will  
108 control, directly or indirectly, twenty-five per cent or more of the  
109 equity interests of the applicant;

110 (6) A statement of management that includes the name and  
111 evidence of the business experience of any person who serves or will  
112 serve as president, chief executive officer or otherwise has or will have  
113 the authority to act as senior executive officer of the applicant; and

114 (7) A financial statement setting forth the financial condition of the  
115 applicant. Except as provided in this subdivision, any professional  
116 employer organization or professional employer organization group  
117 that conducts business prior to January 1, 2008, shall submit the most  
118 recent audit of the professional employer organization or professional  
119 employer organization group, that was conducted no earlier than  
120 thirteen months prior to the date of application. If an applicant has not  
121 had sufficient operating history to have audited financial statements  
122 based on at least twelve months of operating history, the applicant  
123 shall meet the financial capacity requirements specified in section 4 of  
124 this act and submit financial statements reviewed by a certified public  
125 accountant. All information obtained from a professional employer  
126 organization or professional employer organization group under this  
127 subdivision shall be confidential and shall not be published or open to  
128 inspection, except as otherwise required by law.

129 (b) A registered professional employer organization may apply for  
130 renewal of its registration annually by submitting to the commissioner,  
131 not later than one hundred eighty days after the end of the  
132 professional employer organization or professional employer  
133 organization group's fiscal year (1) an audit for the preceding fiscal  
134 year, and (2) notice of any changes in the information provided in such  
135 registrant's immediately preceding application for initial registration

136 or renewal. An applicant may apply for an extension with the  
137 department, but any such request shall be accompanied by a letter  
138 from the auditor stating the reasons for the delay and the anticipated  
139 audit completion date. The financial statement shall be prepared in  
140 accordance with generally accepted accounting principles, and audited  
141 by an independent certified public accountant licensed to practice in  
142 the jurisdiction in which such accountant is located, and shall be  
143 without qualification as to the going concern status of the professional  
144 employer organization.

145 (c) (1) Each professional employer organization operating within  
146 this state on and after January 1, 2008, shall complete its initial  
147 registration not later than June 1, 2008. Such initial registration shall be  
148 valid until the end of the professional employer organization's first  
149 fiscal year end that is subsequent to January 1, 2010.

150 (2) Each professional employer organization not operating within  
151 this state as of July 1, 2007, shall complete its initial registration prior to  
152 commencement of operations within this state.

153 (d) Professional employer organizations in a professional employer  
154 organization group may satisfy the reporting and financial  
155 requirements of this section and section 4 of this act on a combined or  
156 consolidated basis provided that each member of the professional  
157 employer organization group guarantees the obligations under  
158 sections 2 to 6, inclusive, of this act, of each other member of the  
159 professional employer organization group. In the case of a professional  
160 employer organization group that submits a combined or consolidated  
161 audited financial statement including entities that are not professional  
162 employer organizations or that are not in the professional employer  
163 organization group, the controlling entity of the professional employer  
164 organization group under the consolidated or combined statement  
165 shall guarantee the obligations of the professional employer  
166 organization in the professional employer organization group.

167 (e) The commissioner may issue a professional employer

168 organization a limited registration if such professional employer  
169 organization provides evidence on a form provided by the department  
170 that it:

171 (1) Is domiciled outside this state and is licensed or registered as a  
172 professional employer organization in another state;

173 (2) Does not maintain an office in this state or directly solicit clients  
174 located or domiciled within this state; and

175 (3) Does not have more than fifty covered employees employed or  
176 domiciled in this state at any particular time.

177 (f) The department shall maintain a list of professional employer  
178 organizations registered under this section.

179 (g) The department shall prescribe forms necessary to promote the  
180 efficient administration of this section.

181 (h) No registration fee charged pursuant to this section shall exceed  
182 the amount reasonably necessary for the administration of this section  
183 and sections 4 to 6, inclusive, of this act, provided an initial registration  
184 fee shall not exceed one thousand five hundred dollars and a renewal  
185 fee shall not exceed one thousand dollars.

186 Sec. 4. (NEW) (*Effective January 1, 2008*) (a) Except as provided in  
187 subsection (b) of this section or section 3 of this act, each professional  
188 employer organization or, collectively, each professional employer  
189 organization group shall either:

190 (1) Maintain a minimum of one hundred fifty thousand dollars in  
191 working capital, as defined by generally accepted accounting  
192 principles, as reflected in the financial statements submitted to the  
193 department with the initial registration and each annual renewal. A  
194 professional employer organization or professional employer  
195 organization group with less than one hundred fifty thousand dollars  
196 in working capital at renewal shall have one hundred eighty days to  
197 eliminate the deficiency. During such one hundred eighty days, the

198 professional employer organization or professional employer  
199 organization group shall submit quarterly financial statements to the  
200 department accompanied by the attestation of the chief executive  
201 officer that all wages, taxes, workers' compensation premiums and  
202 employee benefits have been paid by the professional employer  
203 organization or members of the professional employer organization  
204 group; or

205 (2) Provide a bond, irrevocable letter of credit or securities with a  
206 minimum market value of one hundred fifty thousand dollars to the  
207 department. Such bond shall be held by a depository designated by the  
208 commissioner, securing payment by the professional employer  
209 organization of all taxes, wages, benefits or other entitlement due to or  
210 with respect to covered employees, if the professional employer  
211 organization does not make such payments when due. For any  
212 professional employer organization or professional employer  
213 organization group whose annual financial statements do not indicate  
214 positive working capital, the amount of the bond shall be one hundred  
215 thousand dollars plus an amount sufficient to cover the deficit in  
216 working capital.

217 (b) The commissioner may accept an affidavit or certification of a  
218 bonded, independent and qualified assurance organization approved  
219 by the commissioner certifying qualifications of a professional  
220 employer organization in lieu of the requirements of this section.

221 (c) The provisions of subsections (a) and (b) of this section shall not  
222 apply to a professional employer organization that has been issued a  
223 limited registration under subsection (e) of section 3 of this act.

224 Sec. 5. (NEW) (*Effective January 1, 2008*) (a) Except as specifically  
225 provided in sections 2 to 6, inclusive, of this act, the allocation of  
226 rights, duties and obligations of a professional employer organization  
227 and a client shall be determined by the professional employer  
228 agreement.

229 (b) Each professional employer agreement shall:

230 (1) Provide for the (A) allocation of employer rights and obligations  
231 between the client and the professional employer organization with  
232 respect to the covered employees, and (B) professional employer  
233 organization and the client to assume the responsibilities required by  
234 sections 2 to 6, inclusive, of this act; and

235 (2) Require the professional employer organization (A) to pay  
236 wages to covered employees; (B) to withhold, collect, report and remit  
237 payroll-related and unemployment taxes; and (C) to the extent the  
238 professional employer organization has assumed responsibility in the  
239 professional employer agreement, to make payments for employee  
240 benefits for covered employees.

241 (c) Except to the extent otherwise expressly provided by the  
242 applicable professional employer agreement:

243 (1) A client shall be solely responsible for the quality, adequacy or  
244 safety of the goods or services produced or sold in the client's business;

245 (2) A client shall be solely responsible for directing, supervising,  
246 training and controlling the work of covered employees with respect to  
247 the business activities of the client and solely responsible for the acts,  
248 errors or omissions of covered employees with regard to such  
249 activities;

250 (3) A client shall not be liable for the acts, errors or omissions of a  
251 professional employer organization or of any covered employee of the  
252 client when such covered employee is acting under the express  
253 direction and control of the professional employer organization;

254 (4) A professional employer organization shall not be liable for the  
255 acts, errors or omissions of a client or of any covered employee of the  
256 client when such covered employee is acting under the express  
257 direction and control of the client; and

258 (5) A covered employee is not, solely as the result of being a covered  
259 employee of a professional employer organization, an employee of the

260 professional employer organization for purposes of general liability  
261 insurance, fidelity bonds, surety bonds, employer's liability which is  
262 not covered by workers' compensation and employer's liability  
263 insurance carried by the professional employer organization unless the  
264 covered employees are included by specific reference in the  
265 professional employer agreement and applicable prearranged  
266 employment contract, insurance contract or bond.

267 Sec. 6. (NEW) (*Effective January 1, 2008*) (a) No professional  
268 employer organization or controlling person of a professional  
269 employer organization shall:

270 (1) Wilfully violate any provision of sections 2 to 5, inclusive, of this  
271 act;

272 (2) Be convicted of a crime that relates to (A) the operation of a  
273 professional employer organization, (B) fraud or deceit, or (C) the  
274 ability of the professional employer organization or a controlling  
275 person of a professional employer organization to operate a  
276 professional employer organization; or

277 (3) Knowingly make a material misrepresentation to the department  
278 or other governmental agency.

279 (b) Upon finding, after notice and opportunity for hearing, that a  
280 professional employer organization or a controlling person of a  
281 professional employer organization has violated one or more  
282 provisions of subsection (a) of this section, the commissioner may:

283 (1) Deny any application for registration;

284 (2) Revoke, restrict or refuse to renew a registration;

285 (3) Impose an administrative penalty in an amount not to exceed  
286 one thousand dollars for each material violation;

287 (4) Place the professional employer organization or controlling  
288 person of a professional employer organization on probation for a

289 period to be determined by the commissioner, subject to reasonable  
 290 conditions specified by the commissioner; or

291 (5) Issue a cease and desist order.

292 Sec. 7. (*Effective July 1, 2007*) Nothing in sections 1 to 6, inclusive, of  
 293 this act shall be construed as affecting any provisions within title 31 of  
 294 the general statutes, or any regulations or policies adopted by the Labor  
 295 Department, including, but not limited to. Such provisions, regulations  
 296 or policies relating to determinations of the employer-employee  
 297 relationship.

298 Sec. 8. (NEW) (*Effective from passage*) On or before January 1, 2008,  
 299 the commissioner shall adopt regulations, in accordance with chapter  
 300 54 of the general statutes, to implement and administer sections 1 to 6,  
 301 inclusive, of this act."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2008</i>	New section
Sec. 2	<i>January 1, 2008</i>	New section
Sec. 3	<i>January 1, 2008</i>	New section
Sec. 4	<i>January 1, 2008</i>	New section
Sec. 5	<i>January 1, 2008</i>	New section
Sec. 6	<i>January 1, 2008</i>	New section
Sec. 7	<i>July 1, 2007</i>	New section
Sec. 8	<i>from passage</i>	New section